

REMARKS

Claims 1-9 and 12-15 are currently pending. Claims 10 and 11 were canceled by way of a Preliminary Amendment, and by the above claim 7 has been amended to depend from claim 6 and minor typographical errors in the punctuation have been corrected.

The Office Action of October 13, 2010, includes an indication that claims 1-11 are currently pending. At the time of the Office Action, a Preliminary Amendment was in place in which claims 10 and 11 had been canceled and new claims 12-15 added. Rather than asking for the Examiner to issue a new Office Action, Applicants determined that they can effectively respond to the Office Action without this inconvenience to the Examiner.

Applicants appreciate the Examiner's review of the priority claim in determination of priority for the individual claims is March 15, 2004.

The Office Action includes an objection to claim 7 noting that it properly depends from claim 6, rather than claim 5. The Examiner's diligence in this regard is noted with appreciation and, the appropriate change has been made. Accordingly, withdrawal of this objection is respectfully requested.

Rejections Under 35 U.S.C. § 101

The Office Action includes a rejection under 35 U.S.C. § 101 of claims 10 and 11 as allegedly being directed to non-statutory subject matter. As noted above, a Preliminary Amendment had canceled these claims, thus rendering this rejection moot. Accordingly, withdrawal thereof is respectfully requested. It is noted, however, that Applicants contest some of the comments made in the Office Action

particularly the assertion that the claims represent computer programs as computer listings per se. Computer listings per se cannot perform any "acts" in absence of being executed or compiled on a computer. Hence, the claims could not read on computer listings per se. In any event, the rejection is moot.

Rejections Under 35 U.S.C. § 103

The Office Action includes a rejection of then pending claims 1-11 under 35 U.S.C. § 103 as allegedly being unpatentable over O'Neill (U.S. Patent No. 6,832,373) in view of Chen et al. (U.S. Publication No. 2005/0102660). This rejection is respectfully traversed.

If the undersigned understands the Examiner's nomenclature, bracketed text indicates text which is not met by the reference being discussed. In this regard, Applicants agree that O'Neill merely teaches a system and method for updating and distributing information sequences such as software that are stored and used in various forms such as files, memory locations and/or embedded storage locations. O'Neill is discussed in the paragraph bridging pages 2 and 3 of the present originally filed application. Applicants acknowledge too that it does not disclose many of the features in the claim including determining a form of an old version *that indicates at which end of the old version free space is located*, whether an update package is a corresponding update package *for the form* and if so, updating the blocks in the old version according to said corresponding update package, *giving rise to a new version having an alternative form wherein the free space in the new version is at the opposite end of the old version*. Hence, as characterized in the Office Action, O'Neill

does not teach a majority of the recitations of the independent claims in the various forms found in the independent claims.

In this regard, the Office attempts to apply Chen et al. as allegedly teaching these deficiencies. Applicants respectfully disagree. Assuming *arguendo* that the Examiner's characterization of Chen et al. is accurate, Chen et al. merely identifies that unused or free memory segments exists in a memory device, which is acknowledged in the Background section of the present application. In fact, Chen et al. discloses that "it is contemplated the occasional free memory block 437 provides a small free memory space" as quoted by the Examiner with reference to paragraph [0058] of Chen et al.

Even assuming *arguendo* that some combination of the two references could be contemplated by one of ordinary skill in the art, the hypothetical combination would merely represent software that can be updated using in-place updating of a memory device that has occasional free memory blocks. What is still missing from the hypothetical combination of references is the determination of a *form* of the old version *which indicates which end of the old version free space is located*. As far as the undersigned can tell, Chen et al. merely identifies "occasional free memory blocks" which randomly appear in the memory and therefore would not correspond to a form to "a form of said old version, indicating at which end of the old version's free space is located." Since the combination does not meet this recitation, it cannot meet the more detailed recitations of determining whether an update package is a corresponding update package for the form, since the update package of O'Neill does not take into consideration the form of the old version with reference to where free space is located. As an additional consequence, the hypothetical combination

cannot update blocks of the old version according to the corresponding update package giving rise to a new version having an alternative form where the free space on the new version is at the opposite end of the old version as positively recited in claim 1. In one particular embodiment, the new version may be a B-form, wherein the memory space is located at the end of the file, and the alternative form that results after update is an E-form wherein the free memory is at the beginning of the file as illustrated in Figure 1C, for instance. That is, nothing in the hypothetical combination would suggest changing a B-form to an E-form, or *visa versa*.

It is noted that the Office suggests Figures 4A and 4B of Chen et al. illustrate the B-form and the E-form. Applicants respectfully note that Figures 4A and 4B illustrate that the B-form and the E-form are not present, particularly Figure 4B which shows free space 437 inside the file format represented by blocks A, B, C and D. In fact, from paragraph [0010] of Chen et al., it is apparent that the free memory space is "available should the update size occupy a larger space than the existing software" and therefore is not relevant to the B or E form as used in the method embodied recited in the independent claims of the present application. At best, this disclosure is relevant to dependent claims 6 and 7, but even in that regard it does not seem to meet the claim recitations of claims 6 and 7 insofar as the free space referred to in these claims refers to space in the beginning or end of free space located at one end or the other end of a form of an old version of the software, which is very different from the randomly placed free memory space of Chen et al.

Applicants respectfully submit that each of the independent claims 1, 8, 9 and 12-15 contain at least one of the distinctions cited above and therefore are patentable for at least one of the reasons given above.

In light of the foregoing, Applicants respectfully request reconsideration and allowance of the above-captioned application. Should any residual issues exist or arise, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,

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